

Ms. GARCIA of Texas. Madam Speaker, I rise today in support of my colleague from New Jersey Mr. GOTTHEIMER's bill, H.R. 5914, the Empowering States to Protect Seniors from Bad Actors Act, of which I am a proud cosponsor.

Increasingly, senior investors and consumers have become the target of financial exploitation. Sadly, one in five older Americans have been victimized by financial fraud.

Madam Speaker, in today's world of technology and telemarketing calls and robocalls, it is only getting worse.

I can tell you, Madam Speaker, that I have had many lives in my life. I am like a cat. The first life I had was as a geriatric social worker. I saw it back then, but it was a little bit different. Now, with technology and all the high-tech things that one can do, it gets worse and worse. The numbers are getting higher, and the dollar values are getting higher.

Protecting seniors from financial exploitation is critical to ensuring that seniors can maintain a secure retirement.

This bill will help do that. It creates a senior investor protection grant program to be implemented by the Securities and Exchange Commission, which will work closely with State securities regulators to protect older investors and educate seniors about financial matters and financial scams.

Madam Speaker, I thank Chairwoman WATERS and Representative GOTTHEIMER for bringing this bipartisan bill before us today. I urge my colleagues to vote "yes" on this bill, and I look forward to seeing it come to fruition.

Mr. HILL. Madam Speaker, let me again urge our colleagues to provide support for this bill.

Madam Speaker, I yield back the balance of my time.

Mr. GARCIA of Illinois. Madam Speaker, I yield myself the balance of my time.

Madam Speaker, this is a strongly bipartisan bill aimed to strengthen senior investment protection programs at our States' securities and insurance regulators. It will help protect millions of seniors who are vulnerable to scams and fraudsters.

I thank Mr. GOTTHEIMER for his leadership on this bill, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois (Mr. GARCIA) that the House suspend the rules and pass the bill, H.R. 5914, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the yeas have it.

Mr. ROY. Madam Speaker, on that I demand the yeas and nays.

The SPEAKER pro tempore. Pursuant to section 3(s) of House Resolution 8, the yeas and nays are ordered.

Pursuant to clause 8 of rule XX, further proceedings on this motion are postponed.

# SMALL BUSINESS MERGERS, ACQUISITIONS, SALES, AND BROKERAGE SIMPLIFICATION ACT OF 2021

Mr. GARCIA of Illinois. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 935) to amend the Securities Exchange Act of 1934 to exempt from registration brokers performing services in connection with the transfer of ownership of smaller privately held companies, as amended. The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 935

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2021".

## SEC. 2. REGISTRATION EXEMPTION FOR MERGER AND ACQUISITION BROKERS.

Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended by adding at the end the following:

"(13) REGISTRATION EXEMPTION FOR MERGER AND ACQUISITION BROKERS.—

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), an M&A broker shall be exempt from registration under this section.

"(B) EXCLUDED ACTIVITIES.—An M&A broker is not exempt from registration under this paragraph if such broker does any of the following:

"(i) Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction.

"(ii) Engages on behalf of an issuer in a public offering of any class of securities that is registered, or is required to be registered, with the Commission under section 12 or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under subsection (d).

"(iii) Engages on behalf of any party in a transaction involving a shell company, other than a business combination related shell company.

"(iv) Directly, or indirectly through any of its affiliates, provides financing related to the transfer of ownership of an eligible privately held company.

"(v) Assists any party to obtain financing from an unaffiliated third party without—

"(I) complying with all other applicable laws in connection with such assistance, including, if applicable, Regulation T (12 C.F.R. 220 et seq.); and

"(II) disclosing any compensation in writing to the party.

"(vi) Represents both the buyer and the seller in the same transaction without providing clear written disclosure as to the parties the broker represents and obtaining written consent from both parties to the joint representation.

"(vii) Facilitates a transaction with a group of buyers formed with the assistance of the M&A broker to acquire the eligible privately held company.

"(viii) Engages in a transaction involving the transfer of ownership of an eligible privately held company to a passive buyer or group of passive buyers.

"(ix) Binds a party to a transfer of ownership of an eligible privately held company.

"(C) DISQUALIFICATION.—An M&A broker is not exempt from registration under this paragraph if such broker (and if and as appli-

cable, including any officer, director, member, manager, partner, or employee of such broker)—

"(i) has been barred from association with a broker or dealer by the Commission, any State, or any self-regulatory organization; or

"(ii) is suspended from association with a broker or dealer

"(D) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to limit any other authority of the Commission to exempt any person, or any class of persons, from any provision of this title, or from any provision of any rule or regulation thereunder.

"(E) DEFINITIONS.—In this paragraph:

"(i) BUSINESS COMBINATION RELATED SHELL COMPANY.—The term 'business combination related shell company' means a shell company that is formed by an entity that is not a shell company—

"(I) solely for the purpose of changing the corporate domicile of that entity solely within the United States; or

"(II) solely for the purpose of completing a business combination transaction (as defined under section 230.165(f) of title 17, Code of Federal Regulations) among one or more entities other than the company itself, none of which is a shell company.

"(ii) CONTROL.—The term 'control' means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. There is a presumption of control if, upon completion of a transaction, the buyer or group of buyers—

"(I) has the right to vote 25 percent or more of a class of voting securities or the power to sell or direct the sale of 25 percent or more of a class of voting securities; or

"(II) in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital.

"(iii) ELIGIBLE PRIVATELY HELD COMPANY.—The term 'eligible privately held company' means a privately held company that meets both of the following conditions:

"(I) The company does not have any class of securities registered, or required to be registered, with the Commission under section 12 or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection (d).

"(II) In the fiscal year ending immediately before the fiscal year in which the services of the M&A broker are initially engaged with respect to the securities transaction, the company meets either or both of the following conditions (determined in accordance with the historical financial accounting records of the company):

"(aa) The earnings of the company before interest, taxes, depreciation, and amortization are less than \$25,000,000.

"(bb) The gross revenues of the company are less than \$250,000,000.

For purposes of this subclause, the Commission may by rule modify the dollar figures if the Commission determines that such a modification is necessary or appropriate in the public interest or for the protection of investors.

"(iv) M&A BROKER.—The term 'M&A broker' means a broker, and any person associated with a broker, engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether the broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company, if the broker reasonably believes that—

“(I) upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert—

“(aa) will control the eligible privately held company or the business conducted with the assets of the eligible privately held company; and

“(bb) directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company, including without limitation, for example, by—

“(AA) electing executive officers;

“(BB) approving the annual budget;

“(CC) serving as an executive or other executive manager; or

“(DD) carrying out such other activities as the Commission may, by rule, determine to be in the public interest; and

“(II) if any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, prior to becoming legally bound to consummate the transaction, receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by the management of the issuer in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant, a balance sheet dated not more than 120 days before the date of the offer, and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and material loss contingencies of the issuer.

“(v) SHELL COMPANY.—The term ‘shell company’ means a company that at the time of a transaction with an eligible privately held company—

“(I) has no or nominal operations; and

“(II) has—

“(aa) no or nominal assets;

“(bb) assets consisting solely of cash and cash equivalents; or

“(cc) assets consisting of any amount of cash and cash equivalents and nominal other assets.

“(F) INFLATION ADJUSTMENT.—

“(i) IN GENERAL.—On the date that is 5 years after the date of the enactment of this paragraph, and every 5 years thereafter, each dollar amount in subparagraph (E)(iii)(II) shall be adjusted by—

“(I) dividing the annual value of the Employment Cost Index For Wages and Salaries, Private Industry Workers (or any successor index), as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2021; and

“(II) multiplying such dollar amount by the quotient obtained under subclause (I).

“(ii) ROUNDING.—Each dollar amount determined under clause (i) shall be rounded to the nearest multiple of \$100,000.”

### SEC. 3. EFFECTIVE DATE.

This Act and any amendment made by this Act shall take effect on the date that is 90 days after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Illinois (Mr. GARCÍA) and the gentleman from Arkansas (Mr. HILL) each will control 20 minutes.

The Chair recognizes the gentleman from Illinois.

### GENERAL LEAVE

Mr. GARCÍA of Illinois. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on this legislation and to include extraneous material thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

□ 1600

Mr. GARCÍA of Illinois. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise today to urge passage of H.R. 935, the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2021. I thank its lead sponsors, Congressman HUIZENGA, who serves as the ranking member of the Subcommittee on Investor Protection, Entrepreneurship and Capital Markets, as well as Congresswoman MALONEY who served as the chairwoman of the same subcommittee last Congress.

Congressman HUIZENGA and Congresswoman MALONEY have come together to put forth a commonsense bill, which provides relief for small and midsize businesses who are looking to merge or sell their companies.

Generally, mergers and acquisitions brokers act as intermediaries who conduct negotiated sales of privately held small- and medium-sized companies. These so-called M&A brokers essentially help facilitate the transfer of ownership and control of such companies to a buyer.

The Securities and Exchange Commission, which oversees brokers, can become involved in these transactions because M&A brokers facilitate securities transactions when they connect a selling company to a buyer.

In 2014, the SEC, via a no-action letter, permitted M&A brokers to effect securities transactions with the transfer of ownership of privately held companies without registering as a broker-dealer. This no-action letter helps to account for the fact that small and midsize businesses have fewer resources to pay for the services of registered broker-dealers, and ultimately do not pose the kinds of potentially systemic risks that larger companies may pose.

H.R. 935 would codify the SEC 2014 no-action letter and will further clarify and simplify the registration regime for M&A brokers, which will reduce costs for buyers and sellers.

H.R. 935 is consistent with the North American Securities Administrators Association's model State regulation for M&A brokers, which exempts M&A brokers from State securities legislation.

Madam Speaker, I again thank Members on both sides for coming together on this bill, and I urge its passage, and I reserve the balance of my time.

Mr. HILL. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise today on behalf of the committee in support of H.R. 935, the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act. I particularly want to thank the bill's sponsor, the gentleman from Michigan (Mr. HUIZENGA), for his leadership on this issue on behalf of small businesses across our country. The importance of small businesses to our economy, our job creation, and the innovation across our Nation cannot be overstated. They are the backbone of all of our communities.

In October 2020, the SBA, the Small Business Administration, reported that there were 31.7 million small businesses in the United States. Yet, too often Democrats' heavy-handed approach to business regulation in this country can put that success at risk. A one-size-fits-all regulatory approach disproportionately burdens small enterprises. For those looking to grow through merger and acquisition, they often face additional costs, the expense of that transaction.

The committee has found that merger and acquisition brokers provide crucial services to small businesses whose owners desire to sell the business or merge with another firm. However, certain of these brokers face significant compliance costs, including SEC registration fees, which, of course, are passed on to their clients, the small businesses.

H.R. 935 helps to alleviate these costs by amending the Exchange Act to create a simplified registration system for these kinds of merger and acquisition brokers.

The Securities and Exchange Commission, the SEC, agrees with the premise of this bill. In fact, back in 2014, the SEC issued a no-action letter to exempt certain M&A brokers from registration, and that no-action letter, Madam Speaker, is relied upon today.

Without a change in law, the regulated community is left in a state of uncertainty when it comes to Federal securities laws. The gentleman from Michigan's bill will clarify, simplify, and provide much-needed certainty as to that process without compromising important investor protections.

I also remind my colleagues that this bill has passed the House in previous Congresses. Therefore, our committee urges our colleagues to support H.R. 935, and I reserve the balance of my time.

Mr. GARCÍA of Illinois. Madam Speaker, I have no further speakers and I am prepared to close.

Madam Speaker, I reserve the balance of my time until Mr. HILL yields back.

Mr. HILL. Madam Speaker, I yield 5 minutes to the gentleman from Michigan (Mr. HUIZENGA), the author of this legislation and the ranking member of our Investor Protection, Entrepreneurship, and Capital Markets Subcommittee.

Mr. HUIZENGA. Madam Speaker, I rise today in support of my legislation,

H.R. 935, the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2021.

Madam Speaker, this bill isn't new, we have been here before. In fact, this will be the third instance that my legislation has actually come to the floor. Each time Members of this body have unanimously supported the legislation before us today. I certainly hope that the third time is the charm.

Let's be clear. For small, privately-owned businesses, merger and acquisition advisers and business brokers perform crucial roles in preparing these privately held businesses for a sale or a merger by finding and screening potential business buyers or partners. These brokers play a vital role in navigating M&A transactions to successful outcomes.

Unfortunately, Federal securities regulations technically require an M&A broker to be registered and regulated by the Securities and Exchange Commission, as well as FINRA, just like a Wall Street investment banker selling or buying publicly traded companies. This is a problem long identified by both practitioners and the regulators themselves.

Whether it is a small, locally owned store in Holland, Michigan, my hometown, or a Fortune 500 company, today, the same rules apply, regardless of the size of the business, the size of the transaction, or whether they are publicly or privately held.

Sadly, these last 2 years have only increased the need for my bill. Despite \$5 trillion in COVID relief packages, which have often picked winners and losers, rising costs due to inflation are making it difficult for many small businesses to keep the lights on today.

Recent data from the Federal Reserve itself showed that 85 percent of small businesses experienced financial hardships and difficulties in 2021. According to the Small Business Administration, 68 percent of small business owners say they are having a hard time keeping and hiring staff.

Nevertheless, small businesses continue to be the backbone of all of our local economies. Just look at my home State of Michigan, which is the home of very large companies like the automakers, office furniture makers, chemical companies, and medical device companies. But it also is a place where 98 percent of businesses are small businesses—98 percent of them—and they employ literally half of the Michigan workforce. Just as important, for every \$100 spent at a local business, roughly \$68 stays in the local economy, according to studies.

Small businesses need to grow and have to do a couple of different things to be successful. For some that means they need to consolidate; some may need to restructure and try to recover from the challenges that have been exacerbated by the pandemic or the economy or whatever it might be; and sometimes it may be a family succession plan that is happening within

those small businesses. These innovators, entrepreneurs, and risk-takers are critical to our country's economic growth and prosperity. We need to level the playing field that gives an unfair advantage to those Wall Street big guys.

So, how did we get here?

As was discussed, in 2006 merger and acquisition brokers attempted to address their concerns with the Securities and Exchange Commission by developing a rule that would codify and simplify the "broker-dealer" regulation.

Unfortunately, due to the fallout from the great financial crisis, the SEC could not make the time for this rule-making and make it a priority, which sent groups then to Congress for a legislative fix. Along the way, this bill has enjoyed bipartisan and bicameral support. It passed the Committee on Financial Services, not once, not twice, but now four times, including this last summer.

In 2014, the chief counsel of the Division of Trading of the Securities and Exchange Commission released the M&A broker no-action letter, which concluded that the SEC staff would not recommend enforcement against an unregistered person who was engaged in facilitating a securities transaction solely related to the purchase or sale of a privately held company—regardless of the size of the company—provided certain enumerated conditions were met.

H.R. 935 is consistent with the no-action letter but will clarify and simplify the merger process for small businesses and M&A brokers. The bill codifies the extensive investor protections, while not affecting the SEC's jurisdiction over M&A brokers.

However, a no-action letter is not legally binding. It cannot change securities laws. That is up to us, Congress. We must pass my legislation to provide legal clarity once and for all.

The SPEAKER pro tempore (Ms. NEWMAN). The time of the gentleman has expired.

Mr. HILL. Madam Speaker, I yield an additional 30 seconds to the gentleman.

Mr. HUIZENGA. Madam Speaker, we have been on this journey for nearly 10 years, going back to the 113th Congress. While many of the Members who served with me back then no longer remain, the challenges small businesses face have not dimmed.

Madam Speaker, I recognize my colleague, Representative BRIAN HIGGINS from New York, who has been the original cosponsor from day one, and he has been on this journey every step of the way, as well as Congresswoman MALONEY and Chairwoman WATERS and Ranking Member MCHENRY.

Madam Speaker, I urge my colleagues to pass this commonsense bipartisan legislation.

Mr. GARCÍA of Illinois. Madam Speaker, I reserve the balance of my time.

Mr. HILL. Madam Speaker, let me conclude the discussion on H.R. 935 by

thanking my friend from Michigan for his persistent leadership over many Congresses on this topic. I urge my colleagues to support him in this effort, putting it over the goal line, and getting a great result out of the Senate in the days ahead.

Madam Speaker, I urge a "yes" vote, and I yield back the balance of my time.

Mr. GARCÍA of Illinois. Madam Speaker, I yield myself the balance of my time.

Madam Speaker, I certainly hope the third time is the charm, as the sponsor of the bill has reiterated. H.R. 935 will provide legal certainty to certain financial intermediaries who serve and support small business owners and buyers.

The bill would codify a longstanding no-action letter by the Securities and Exchange Commission. I thank its sponsors, Mr. HUIZENGA and Mrs. MALONEY.

Madam Speaker, I urge the speedy passage by the House, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois (Mr. GARCÍA) that the House suspend the rules and pass the bill, H.R. 935, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. ROY. Madam Speaker, on that I demand the yeas and nays.

The SPEAKER pro tempore. Pursuant to section 3(s) of House Resolution 8, the yeas and nays are ordered.

Pursuant to clause 8 of rule XX, further proceedings on this motion are postponed.

#### RUSSIA AND BELARUS FINANCIAL SANCTIONS ACT OF 2022

Mr. GARCÍA of Illinois. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 7066) to require United States financial institutions to ensure entities and persons owned or controlled by the institution comply with financial sanctions on the Russian Federation and the Republic of Belarus to the same extent as the institution itself, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 7066

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Russia and Belarus Financial Sanctions Act of 2022".

#### SEC. 2. REQUIREMENTS.

(a) IN GENERAL.—A United States financial institution shall take all actions necessary and available to cause any entity or person owned or controlled by the institution to comply with any provision of law described in subsection (b) to the same extent as required of a United States financial institution.